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No. 82-157

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

MARK A. SMITH,

Petitioner,

v.

AL OLSON and MARCH FONG EU,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

ANTHONY L. MILLER
Chief Counsel
RICHARD B. MANESS
Staff Counsel
WILLIAM P. YEE
Staff Counsel

1230 J Street
Sacramento, California
95814
(916) 445-2115

Attorneys for Respondent
MARCH FONG EU

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent March Fong Eu, California Secretary of State respectfully submits her response in opposition to the petition for writ of certiorari to the California Court of Appeals as

as follows:

JURISDICTION

Respondent California Secretary of State March Fong Eu respectfully submits that this court is without jurisdiction to grant certiorari as invoked under 28 U.S.C. section 1257(3) since the decision presented for review has not been reviewed by the highest court of the state.

What is presented for review before this court is a decision by the California Court of Appeal, Fourth Appellate District, denying Petition for Writ of Mandate. The petition for writ of mandate was originally filed with the California Supreme Court. Pursuant to its own authority and without hearing, the court transferred the matter for decision to the Fourth District Court of Appeals (Appendix A). (Calif.Const., art. VI § 12; Rule 20, California Rules

of Court.) On July 9, 1982, the court of appeal denied the Petition for Writ of Mandate (Appendix B). From this decision, no petition was filed with the California Supreme Court for review. It is from this decision that petitioner seeks review by the Court by invoking jurisdiction under 28 U.S.C. section 1257(3).

The Supreme Court and courts of appeal have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. Cal.Const., art. VI § 10. The Supreme Court may grant hearing after decision by a court of appeal "(1) where it appears necessary to secure uniformity of decision or the settlement of important questions of law." (Rule 29, California Rules of Court.)

Where the state procedure provides for discretionary review of

the intermediate appellate court's decision in a higher state court and such discretionary review has not been applied for, the decision of the court of appeal is not a "[f]inal judgment . . . rendered by the highest court of a State in which a decision could be had . . ." (28 U.S.C. § 1257) and as such, this court lacks jurisdiction to review it. Banks v. California (1969) 395 U.S. 708. See also, Stratton v. Stratton (1915) 239 U.S. 55, 36 S.Ct. 26; Fisher v. Perkins (1887) 122 U.S. 522, 7 S.Ct. 1227.

STATEMENT OF THE CASE

Petitioner Mark A. Smith is a registered voter of Orange County, California. Respondent Al Olson is the Registrar of Voters of Orange County. Respondent March Fong Eu is the Secretary of State of the State of California and the State's Chief Elections Officer.

Petitioner was registered as affiliated with the Republican Party until April 1982. On April 2, 1982, petitioner executed an affidavit of registration and disaffiliated himself from the Republican Party by declining to state any political party affiliation. (Appendix C.) The affidavit was received by the county registrar of voters and became effective on April 5, 1982.

Candidates seeking their party

nomination in the June 8, 1982 Direct Primary Election were required to deliver for filing nomination papers and a declaration of candidacy with the county clerk or registrar of voters from February 15, through March 12, 1982.

Candidates seeking an independent nomination for the November 2, 1982 General Election ballot were required to submit nomination papers and an affidavit declaring their candidacy for filing to the county clerk or registrar of voters from June 7, through August 6, 1982.

On or about June 7, 1982, petitioner attempted to obtain independent nomination papers for the office of Representative in Congress, 43rd Congressional District. Respondent Olson refused to issue independent nomination papers to petitioner on the grounds that petitioner's affidavit of

registration evidenced that he could not meet the legal requirements of Elections Code section 6830 subdivision (c). Elections Code section 6830 subdivision (c) requires all candidates for independent nomination to state that:

> ". . . the candidate is not, and was not at any time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the nomination paper, registered as affiliated with a political party qualified under the provisions of [Elections Code] Section 6430."

Upon refusal by Respondent Olson to issue independent nomination papers, petitioner sought judicial relief by filing a petition for writ of mandate with the California Supreme Court to compel Respondent Olson to issue independent nomination papers and to permanently enjoin Respondent Eu from enforcing the provisions of Elections

Code section 6830 subdivision (c).

On July 24, 1982, the California Supreme Court without hearing, transferred the matter to the Court of Appeal, Fourth Appellate District for decision.

On July 9, 1982, the court of appeal denied the petition for writ of mandate. It is from this decision that petitioner seeks review by this court.

STATUTE INVOLVED

This case involves California Elections Code section 6830 subdivision (c). This section and other related sections to the Elections Code are found in Appendix D.

ARGUMENTS FOR DENYING WRIT OF CERTIORARI

On March 26, 1974, this court decided the case of Storer v. Brown (1974) 415 U.S. 724 with the holding, inter alia, that an independent candidate is properly barred from a ballot position at the general election for elective public office if the candidate had a registered affiliation with a qualified political party within one year prior to the immediately preceding primary election.

By a 6 to 3 vote, the court held that the 12 month party disaffiliation provision under Elections Code section 6830(d) (see now Elections Code § 6830 (c)) is not unconstitutional under the First and Fourteenth Amendments as violating equal protection or the right to associate for political purposes. In so holding, the court justified the state statute by the following grounds:

(1) "The requirement that the independent candidate not have been affiliated with a political party for a year before the primary is expressive of a general state policy aimed at maintaining the integrity of the various routes to the ballot. It involves no discrimination against independents. Indeed, the independent candidate must be clear of political party affiliations for a year before the primary; the party candidate must not have been registered with another party for a year before he files his declaration, which must be done not less than 83 and not more than 113 days prior to the primary." Storer v. Brown, supra, 415 U.S. at 733-34.

(2) "It protects the direct primary process by refusing to recognize independent candidates who do not make early plans to leave a party and take the alternative course to the ballot. It works against independent candidacies prompted by short-range political goals, pique, or personal quarrel. It is also a substantial barrier to a party fielding an 'independent' candidate to capture and bleed off votes in the general election that might well go to another party." Storer v. Brown, supra, 415 U.S. at 735-36.

(3) "A State need not take the course California has, but California apparently believes with the Founding Fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government. See The Federalist, No. 10 (Madison). It appears obvious to us that the one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late rather than early decision to seek independent ballot status." Storer v. Brown, supra, 415 U.S. at 736.

(4) "Nor do we have reason for concluding that the device California chose, §6830 (d) (Supp. 1974), was not an essential part of its overall mechanism to achieve its acceptable goals. As we indicated in Rosario [410 U.S. 752 (1973)], the Constitution does not require the State to choose ineffectual means to achieve its aims. To conclude otherwise might sacrifice the political stability of the system of the State, with profound stability of the system of the State, with profound consequences for the

entire citizenry, merely in the interest of particular candidates and their supporters having instantaneous access to the ballot." Storer v. Brown, 415 U.S. at 736.

I

THE COURT'S PRIOR DECISION IN STORER v. BROWN IS STILL CONTROLLING TODAY UNDER CALIFORNIA'S NOMINATION PROCEDURES SINCE PETITIONER HAS PRESENTED NO NEW FACTS OR CONFLICTS IN THE LAW THAT WOULD WARRANT REVIEW BY THE COURT

Petitioner challenges the application of Elections Code section 6830(c) on the grounds that the 12 month party disaffiliation requirement unconstitutionally bars political freedom of activity for candidates for the office of Representative in Congress at least 17 months before the general election. (The 17 months appears to have been calculated by adding the number of months from the June Primary Election to the November General Election to the 12 month party disaffiliation period.)

Elections Code section 6830 states in part that:

"Each candidate . . . shall submit a nomination paper which shall contain:

"(c) A Statement that the candidate is not, and was not at and time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the nomination paper, registered as affiliated with a political party qualified under the provisions of Section 6430."[1]

Petitioner makes the argument that the court in Storer referred to the predecessor of the above statute (Elections Code § 6830(d)) either as a "12 month" disqualification or a "one year" disqualification and did not intend the statute to mean a 17 month party disaffiliation requirement as applied by Respondent Eu.

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1. Section 6830 was repealed by Statutes 1982, chapter 144, § 1 effective January 1, 1983. The language contained in § 6830(c) has been added to Elections Code § 6920 as amended by Stats. 1982, chapter 144, § 6.

To the contrary, the court in Storer was aware of the application and affect of the 12 month party disaffiliation requirements for independent candidates as the court affirmed the judgment of the District Court in its opinion by refusing relief to Storer and Frommhagen with respect to the 1972 general election because

> "[b]oth men were registered democrats until early 1972, Storer until January and Frommhagen until March"

and that

> "[t]his affiliation with a qualified political party within a year prior to the 1972 [June] primary disqualified both men under section 6830(d)." Storer v. Brown, supra, at 728.

The court by its calculation recognized that Storer and Frommhagen were required by state law to disaffiliate themselves at least 12 months prior to the June Primary Election, or as petitioner puts it, 17 months prior to the November General Election.

Respondent submits that the one-year party disaffiliation provision contained in Elections Code section 6830 (c) serves the important state interest of protecting the direct primary process dispite the fact that a candidate seeking independent ballot status must not be affiliated with any qualified political party for at least 17 months prior to the general election. To seek public office in the 1982 general election, petitioner should have disaffiliated himself from the Republican Party on or before June 8, 1981.

It has been recognized that California provides for two routes to gain a ballot position at the general election, that being the direct primary and the independent nomination process. However, California has only <u>one</u> election process to elect a representative to Congress. The election process for the 1982 General Election commenced on

January 28, 1982, when candidates for the office of Representative in Congress were eligible to circulate and file in-lieu-filing-fee petitions.[2/] Elections Code section 6555; Assembly v. Deukmejian (1982) 30 Cal. 638, 678-79. In essence, the period in which petitioner was required to disaffiliate himself from the Republican Party was a little over 6 months before the beginning of the State's election process.

Petitioner next argues that the later cases of Illinois State Board of Elections v. Socialist Workers Party (1979) 440 U.S. 173 and Democratic Party of the United States v. Wisconsin (1981)

---

2. Elections Code section 6494.1 provides that valid signatures appearing on the in-lieu-filing-fee petition shall be counted towards the number of voters required to sign nomination papers.

450 U.S. 107, advances the proposition that a restriction on candidacy is of necessity a restriction on the voters from whom the candidate seeks support. Petitioner contends that in view of these cases, Storer v. Brown, supra, is no longer controlling because of the direct impact of Elections Code section 6830(c) on voters wishing to support a candidate.

The cases relied on by petitioner are distinguishable on their facts and not applicable to the case at hand. In Illinois State Board of Elections v. Socialist Workers Party, supra, the question presented challenged the number of petition signatures required to qualify an independent candidate for the ballot for a local office. In Democratic Party v. Wisconsin, supra, the court's decision addressed the protected rights of political associations in a situation whereby the Democratic National Party was permitted to follow its own party rules

in seating a delegation to its National Convention contrary to state law. The holdings in these two cases are not in conflict with the decision in Storer v. Brown to warrant review.

Petitioner lastly argues that the decision in Storer should be reexamined in light of the circumstances surrounding his candidacy for the office of Representative in Congress. However, examination of the facts in Storer would reveal facts identical to that of Petitioner. Like Storer and Frommhagen, petitioner was registered as affiliated with a qualified political party within the 12 month period prior to the June Primary Election. Also like Storer and Frommhagen, petitioner disaffiliated himself from a qualified political party in order to seek a ballot position on the November General Election via the independent nomination process. Petitioner in this case disaffiliated himself from

a qualified political party on April 2, 1982, after the March 12 close of the nomination period for party candidates for the June Primary Election. Elections Code § 6490. Petitioner has presented no new facts for this court to review its prior decision.

II

PETITIONER'S CLAIM THAT INDEPENDENTS AS A WHOLE CONSTITUTES A POLITICAL PARTY IS WITHOUT MERIT

Petitioner argues that Elections Code sections 6430 and 6830(c) are unconstitutional because it imposes on independents a different standard of participation than independents, as a whole, impose upon themselves.

Petitioner relies on Cousins v. Wigoda (1975) 419 U.S. 477 and Democratic Party of the United States v. Wisconsin, supra, 450 U.S. 107 to support the argument that it is not the proper business of the state to use the compulsion of its election laws to require results affecting a political party which are contrary to the beliefs of that party.

Both Cousins and Democratic Party deal with state election laws which affect the seating of delegates to the

Democratic Party's National Convention. In both cases, the court struck down the state law as applied to the manner in which delegates to a party's National Convention are selected.

The decisions relied on by petitioner addresses the rights of political parties and not rights of voters registered with no affiliation with a qualified political party. Petitioner attempts to persuade this Court that registered voters with no political party affiliation constitutes a political party of their own in California. This argument is without merit since petitioner has made no showing that such voters desire to associate together as a political group.

III

ELECTIONS CODE SECTIONS 6401 AND 6830(c) WERE CONSTITUTIONALLY UPHELD IN STORER v. BROWN

The court's prior decision in Storer v. Brown upheld the one year party disaffiliation provisions of Elections Code sections 6401 and 6830(c) by recognizing that California election laws provide for two separate routes to the November General ballot. One route is the party nomination in the direct primary and the other is the independent nomination process. The court understood the need to protect this system as follows:

> "It appears obvious to us that the one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status." Storer v. Brown, supra, 415 U.S. at 736.

By application of Storer, petitioner was properly barred from the November General Election since he was continuously affiliated with the Republican party until April of this year. Any voter support that petitioner may have received for the general election has been outweighed by the state's compelling interest to preserve stability of its political system.

Petitioner on the other hand contends that the court should rehear Storer on the grounds that Elections Code sections 6401 and 6830(c) discriminates against voters who disaffiliate themselves from a qualified political to seek independent ballot status. It is petitioner's contention that

> "an independent seeking to run as a Republican, must register as a Republican three months . . . [before he files his declaration of candidacy for] . . . the primary in which he

> wishes to compete. A Republican seeking to run as an independent must register at least 17 months prior to the general election in which he wishes to compete . . ." Petition, page 14.

Petitioner in his argument assumes that voters registered with no affiliation with a qualified political party constitute a political party of their own and as such, voters who affiliate with "independent" voters for at least 3 months should be permitted to seek independent ballot status regardless of their prior party affiliation.

This assumption is erroneous. No party of "independents" exist in California nor does any legal authority recognize such a group as a qualified political party in California. As a matter of law, voters registered with no affiliation with a qualified political party are not permitted to vote the ballot of any political party at the primary election. Elections Code § 501.

IV

ELECTIONS CODE SECTION 6830(c) WAS CONSTITUTIONALLY APPLIED EVEN THOUGH CONGRESSIONAL DISTRICTS WERE REAPPORTIONED

The congressional districts applicable to the upcoming November General Election were reapportioned by the Legislature and signed into law on September 16, 1981 (Cal.Stats. 1981, ch. 535). The legislative plan was stayed by referendum but was ordered into effect by the California Supreme Court for the 1982 primary and general elections. See Assembly v. Deukmejian, supra, 30 Cal.3d 638. The Legislature's congressional reapportionment plan was rejected by the voters at the June 8, 1982 Direct Primary Election (Proposition 10).

Petitioner contends that the one-year disaffiliation provision should not be applied in election years when congressional districts are reapportioned. The basis of his argument rests on the

theory that candidates must bear the burden of making plans for election when the district boundaries are not known to the candidates.

Elections Code section 6830(c) was designed to protect the direct primary process by refusing to recognize independent candidates who do not make early plans to leave a party to seek independent ballot status. Storer v. Brown, supra, 415 U.S. at 735. The goal to protect the state's direct primary process can only be achieved by applying section 6830(c) in years when congressional districts are reapportioned. The one-year disaffiliation provision does not hamper candidates who seriously plan to seek public office.

Petitioner's claim is without merit since the 43rd Congressional District was officially established on September 16, 1981 (Cal.Stats., ch. 535). There was no reason evident why petitioner

could not have disaffiliated himself from the Republican Party at that time. Rather, petitioner waited until April 2, 1982, before initiating any steps to seek a position on the November General Election ballot as an independent candidate. Such plans could be equated to short-range political goals.

In Storer v. Brown, Petitioners Storer and Frommhagen both sought elective public office in newly reapportioned congressional districts. See, Legislature v. Reinecke (1972) 6 Cal.3d 595, 603-604. This court did not discuss the reapportionment issue raised by petitioner here in its opinion.

Respondent submits that the issue regarding the affect of section 6830(c) in light of newly reapportioned congressional districts is not important enough to warrant review since petitioner's candidacy can be equated to short-range political goals.

CONCLUSION

Based on the foregoing arguments, Respondent Eu respectfully requests this court to deny the Petition for Writ of Certiorari.

Respondent further requests that this court issue no order to place Petitioner Mark A. Smith's name on the November 2, 1982 General Election ballot.

DATED: October 19, 1982.

Respectfully submitted,

ANTHONY L. MILLER
Chief Counsel
RICHARD B. MANESS
Staff Counsel
WILLIAM P. YEE
Staff Counsel

By: _____
WILLIAM P. YEE
Staff Counsel

Attorneys for Respondent
MARCH FONG EU

L.A. No. 31592

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SMITH

v.

OLSON et al.

SUPREME COURT
F I L E D
Jun 24 1982
Laurence P. Gill,
Clerk

The above entitled proceeding is transferred to the Court of Appeal, Fourth Appellate District, Division Two.

BIRD Chief Justice

APPENDIX A

Appendix A

COURT OF APPEAL—STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT

DIVISION TWO

FILED
July 9, 1982

Keenan G. Casady, Clerk

_____
Deputy Clerk

MARK A. SMITH,
Petitioner,

vs.

AL OLSON, etc., *et al,*
Respondents,

No. 29064

4 Civil County No. _____

THE COURT:

The petition for writ of mandate, originally filed in the Supreme Court and transferred to this court for decision is DENIED.

TROTTER, J.
Acting Presiding Judge

CC

Mark A. Smith Prof. Corp., Douglas M. Campbell, 24551 Raymond Way, Ste. 150, Lake Forest-El Toro 92630
Al Olson, Registrar of Voters, 1300 S. Grand Ave., Santa Ana 92705
March Fong Eu, Secretary of State, 1230 J St., Sacramento 95814

APPENDIX B

APPENDIX C

STATE OF - ESTADO DE CALIFORNIA
COUNTY OF - CONDADO DE - ORANGE

AFFIDAVIT OF REGISTRATION - DECLARACIÓN JURADA DE EMPADRONAMIENTO

PRINT IN INK—ESCRIBA EN LETRA DE MOLDE EN TINTA

STATEMENT PRIOR TO SIGNING — DECLARACIÓN ANTES DE FIRMAR

1 Optional (Opcional) – ☐ Mr./Sr. ☐ Mrs./Sra. ☐ Miss/Srta. ☐ Ms.
Name - Nombre (first - primer) (middle - segundo) (last - apellido)
Mark Allan Smith

2 Residence - Residencia (No. - Núm., Street - Calle, Apt. No. - Núm. del Apt.)
24761 Rollingwood ~~Road~~ Rd.

City - Ciudad: El Toro | County - Condado: Orange | Zip Code - Zona Postal: CA 92630

3 If no street address, describe location of residence: (cross streets, route, box, section, township, range, etc.) - Si la calle no tiene núm. describa la localidad (Calles que atraviesan, etc.)
N/A

4 Mailing Address (if different) - Dirección Postal (si es diferente)
24551 Raymond ~~Way~~, Suite 150

City - Ciudad: El Toro | State - Estado: CA | Zip Code - Zona Postal: 92630

5 Date of Birth - Fecha de Nacimiento
April 17, 1945
(mo. - mes / day - día / year - año)

6 Occupation - Profesión
Attorney

7 Birthplace - Lugar de Nacimiento
California
(Name of U.S. State or Foreign Country - Estado de EE.UU. o país Extranjero)

8 Political Party - Partido Político (Check one) (Indique uno)
- ☐ American Independent Party
- ☐ Democratic Party
- ☐ Libertarian Party
- ☐ Peace and Freedom Party
- ☐ Republican Party
- ☒ Decline to State–Se niega a declarar
- ☐ Other–Otro _____ (Specify) (Explique)

9 Telephone (Optional) Teléfono (Opcional)
714/770-7012

10 I prefer election materials in - Prefiero materiales electorales en:
(Check one) (Indique uno)
- ☒ English
- ☐ Español

I am a citizen of the United States and will be at least 18 years of age at the time of the next election. I am not imprisoned or on parole for the conviction of a felony. I certify under penalty of perjury under the laws of the State of California, that the information on this affidavit is true and correct.

Soy ciudadano de los Estados Unidos y tendré por lo menos 18 años de edad para la próxima elección. No estoy preso o bajo el régimen de libertad provisional por un crimen de un delito grave. Juro bajo pena de falso juramento bajo leyes del Estado de California que la información en esta Declaración Jurada es verdadero y correcta.

11 Signature - Firma: [signature] Date - fecha: 4/2/82

WARNING
Perjury is punishable by imprisonment in State prison for two, three or four years. §126 Penal Code.

AVISO
El juramento en falso es castigable con encarcelamiento en la prisión del estado por dos, tres, o cuatro años. §126 Código Penal.

12 Signature of person assisting (if any)
Firma de la persona que le ayuda (si hay alguien)
N/A

13 PRIOR REGISTRATION:
REGISTRO PREVIO:
If you are currently registered to vote fill in portion below.
Si Ud. está empadronado actualmente para votar llene los espacios abajo.

Name - Nombre: Mark Allan Smith
Former Address - Dirección Anterior: 24761 Rollingwood Road
City - Ciudad: El Toro | County - Condado: Orange | State - Estado: CA 92630
Political Party - Partido Político: Previously Republican | J604902

OFFICE USE: APR 0 6 1982

501. Declaration of party affiliation.

At the time of registering and of transferring registration, each elector may declare the name of the political party with which he or she intends to affiliate at the ensuing primary election. The name of that political party shall be stated in the affidavit of registration and the index.

The voter registration card shall inform the affiant that any elector may decline to state a political affiliation, but no person shall be entitled to vote the ballot of any political party at any primary election unless he or she has stated the name of the party with which he intends to affiliate. The voter registration card shall include a listing of all qualified political parties.

No person shall be permitted to vote the ballot of any party or for any delegates to the convention of any party other than the party designated in his or her registration, except as provided by Section 502.

(Amended by Stats. 1977, c. 1116, §5.)

6481. Declaration of candidacy for partisan office; requirements; county clerk shall certify.

No declaration of candidacy for a partisan office or for membership on a county central committee shall be filed, by a candidate unless (1) at the time of presentation of the declaration and continuously for not less than three months immediately prior to that time, or for as long as he has been eligible to register to vote in the state, the candidate is shown by his affidavit of registration to be affiliated with the political party the nomination of which he seeks, and (2) the candidate has not been registered as affiliated with a qualified political party other than that political party the nomination of which he seeks within 12 months immediately prior to the filing of the declaration.

The county clerk shall attach a certificate to the declaration of candidacy showing the date on which the candidate registered as intending to affiliate with the political party the nomination of which he seeks, and indicating that the candidate has not been affiliated with any other qualified political party for the 12-month period immediately preceding the filing of the declaration. The provisions of this section shall not apply to declarations of candidacy filed by a candidate of a political party participating in its first direct primary election subsequent to its qualification as a political party pursuant to the provisions of Section 6430.

(Amended by Stats. 1977, c. 1205, §33.5.)

Article 2. Qualified Parties

6430. Party qualified to participate.

A party is qualified to participate in any primary election:

(a) If at the last preceding gubernatorial election there was polled for any one of its candidates for any office voted on throughout the state, at least 2 percent of the entire vote of the state; or

(b) If on or before the 135th day before any primary election, it appears to the Secretary of State, as a result of examining and totaling the statement of voters and their political affiliations transmitted to him by the county clerks, that voters equal in number to at least 1 percent of the entire vote of the state at the last preceding gubernatorial election have declared their intention to affiliate with that party; or

(c) If on or before the 135th day before any primary election, there is filed with the Secretary of State a petition signed by voters, equal in number to at least 10 percent of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election. This petition shall be circulated, signed, verified and the signatures of the voters on it shall be certified to and transmitted to the Secretary of State by the county clerks substantially as provided for initiative petitions. Each page of the petition shall bear a caption in 18-point blackface type, which caption shall be the name of the proposed party followed by the words "Petition to participate in the primary election." No voters or organization of voters shall assume a party name or designation which is so similar to the name of an existing party as to mislead voters.

(Added by Stats. 1976, c. 1191, §61.)

6490. Nomination documents which must be filed; filing dates.

No candidate's name shall be printed on the ballot to be used at the direct primary unless the following nomination documents are delivered for filing to the county clerk not less than 88 and not more than 113 days prior to the direct primary:

(a) Declaration of candidacy pursuant to Section 6491.

(b) Nomination papers signed by signers pursuant to Section 6494.

The county clerk shall not accept the nomination documents after 5 p.m. on the 88th day prior to the direct primary.

Upon the receipt of an executed nomination document, the county clerk shall give the person delivering such document a receipt, properly dated, indicating that the document was delivered to the county clerk.

(Amended by Stats. 1978, c. 616, §2.)

6494.1. In-lieu-filing-fee petition.

If a candidate submits an in-lieu-filing-fee petition pursuant to Section 6555, any or all signatures appearing on the petition, which would be valid under Section 6494, shall be counted towards the number of voters required to sign a nomination paper. If an in-lieu-filing-fee petition contains a requisite number of valid signatures under Section 6495, the candidate shall not be required to file nomination papers, but may request the county clerk to accept the petition instead of filing nomination papers.

If an in-lieu-filing-fee petition does not contain the requisite number of valid signatures as set forth in Section 6495, the candidate shall be entitled to file, within the time period allowed for filing nomination papers, a nomination paper in order to obtain the requisite number of valid signatures required to be submitted to the county clerk on a nomination paper. A candidate who submits a nomination paper pursuant to this paragraph shall only be required to obtain the number of signatures thereon needed to supplement the in-lieu-filing-fee petition so that the combination of signatures appearing on the in-lieu-filing-fee petition and the nomination paper equals or exceeds the requisite number of signatures set forth in Section 6495.

(Amended by Stats. 1981, c. 664, §2.)

6555. Petition in-lieu-of filing fee.

(a) Notwithstanding any other provision of this article, a candidate may submit a petition containing signatures of registered voters in lieu of a filing fee as follows:

(1) For the office of California State Assembly, 1,500 signatures.

(2) For the office of California State Senate and the United States House of Representatives, 3,000 signatures.

(3) For candidates running for statewide office, 10,000 signatures.

(4) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he seeks nomination is 2,000 or more, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 10 percent of the total of registered voters in the district in which he seeks nomination, whichever is less.

(5) For all other offices for which a filing fee is required, if the number of registered voters in the district in which he seeks nomination is less than 2,000, a candidate may submit a petition containing four signatures of registered voters for each dollar of the filing fee, or 20 percent of the total of registered voters in the district in which he seeks nomination, whichever is less.

(6) Notwithstanding any other provision of this section, a candidate seeking the nomination of a qualified party with whom he is registered, the registered voters of which who were eligible to vote at the last statewide election constituted less than 5 percent of all registered voters eligible to vote at the last statewide election, may submit a petition containing signatures of 10 percent of the registered voters of that party in the district in which he seeks nomination, or 150 signatures, whichever is less.

(7) A voter may sign both a candidate's nomination papers and his or her in-lieu-filing-fee petition. However, if signatures appearing on such documents are counted towards both the nomination paper and the in-lieu-filing-fee petition signature requirements, a person may only sign one of the documents.

(b) Each clerk shall furnish to each candidate, upon request, and without charge therefor, forms for securing signatures. Such forms shall be made available commencing 45 days before the first day for circulating nomination papers. However, in cases of vacancies for which a special election is authorized or required to be held to fill the vacancy, and where the prescribed nomination period would commence less than 45 days after the creation of the vacancy, the forms shall be made available within five working days after the creation of the vacancy. No other form except the form furnished by the county clerk shall be used to secure signatures. Each petition section shall bear an affidavit signed by the circulator, in substantially the same form as set forth in Section 6494. The substitution of signatures for fees shall be subject to the following provisions:

(1) Any registered voter may sign an in-lieu-filing-fee petition for any candidate for whom he is eligible to vote.

(2) If a voter signs more candidates' petitions than there are offices to be filled, the voter's signatures shall be valid only on those petitions which, taken in the order they were filed, do not exceed the number of offices to be filled.

(3) In-lieu-filing-fee petitions shall be filed at least 15 days prior to the close of the nomination period. Upon receipt of the minimum number of in-lieu-filing-fee signatures required, or a sufficient combination of such signatures and pro rata filing fee, the clerk shall issue nomination papers provisionally. Within 10 days after receipt of a petition, the clerk shall notify the candidate of any deficiency. The candidate shall then, prior to the close of the nomination period, either submit a supplemental petition, or pay a pro rata portion of the filing fee, to cover the deficiency.

(4) If the petition is circulated for an office in more than one county, the candidate shall submit the signatures to the county clerk in the county in which the petition was circulated. The county clerk shall at least two days after verifying the signatures on the petition, notify the Secretary of State of the total number of valid signatures. If the number of signatures is insufficient, the Secretary of State shall notify the candidate and the county clerks of the fact. The candidate may submit the necessary number of valid signatures at any time prior to the close of the period for circulating nomination papers. Each circulator of an in-lieu-filing-fee petition shall have the qualifications required under Section 42.

(5) Each candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The clerk shall not be required to determine the validity of a greater number of signatures than that required by this section.

(c) For the purposes of this section, the requisite number of signatures shall be computed from the latest registration figures forwarded to the Secretary of State pursuant to Section 607 prior to the first day on which petitions are available.

(d) All valid signatures obtained pursuant to this section shall be counted towards the number of voters required to sign a nomination paper in accordance with Section 6494.1 or 6834.1.

(Amended by Stats. 1981, c. 664, §4.)

Article 2. Nomination Papers

6830. Contents of nomination paper.

Each candidate or group of candidates shall submit a nomination paper which shall contain:

(a) The name and residence address of each candidate, including the name of the county in which he resides.

(b) A designation of the office for which the candidate or group seeks nomination.

(c) A statement that the candidate is not, and was not at any time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the nomination paper, registered as affiliated with a political party qualified under the provisions of Section 6430. The statement required by this subdivision shall be omitted when no primary election was held to nominate candidates for the office to which the independent nomination paper is directed.

(Amended by Stats. 1977, c. 1205, §36.)

Article 5. Affidavit of Candidate

6920. Candidate to file affidavit.

Each candidate, at least 88 days prior to the election, shall leave with the officer with whom his nomination papers are required to be left an affidavit which shall state:

(a) His residence, with street and number, if any.

(b) His election precinct.

(c) That he is a voter in the precinct in which he resides.

(d) The name of the office for which he is a candidate.

(e) That he will not withdraw as a candidate before the election.

(f) That, if elected, he will qualify for the office.

The name of a candidate shall not be placed on the ballot unless the affidavit provided for in this section has been properly filed.

(Amended by Stats. 1980, c. 838, §4.)